APPEAL NO. 022242
FILED OCTOBER 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on August 7, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable (repetitive trauma) occupational disease injury; that the date of injury is _____; that the claimant failed to timely notify her employer of her injury and did not have good cause for failing to do so; that the claimant did "not have disability resulting from a compensable injury"; and that the respondent (carrier) is not relieved from liability because of the claimant's failure to file a claim for compensation because the time for filing the claim was tolled by the employer's failure to file a Employer's First Report of injury or Illness (TWCC-1).

The claimant appeals, asserting that her date of injury is (alleged date of injury), and that she did "have good cause for not reporting [her] injuries to [her] supervisor with in 30 days of _____." The claimant reiterates much of her testimony from the CCH, expanding on some portions, and complains that her attorney did not give his "attention and cooperation" to this case. The file does not contain a response from the carrier. The issue of the filing of a claim within one year has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant has been employed as a "processor" operating certain machines. The claimant described her job duties in some detail at the CCH and again in her appeal. The hearing officer found that the claimant sustained an injury "doing repetitive work as a processor" (contrary to the claimant's understanding and appeal of this determination). The key to this case is the date of injury as the parties appear to agree, and the hearing officer determined, that the claimant reported her claimed injuries to her supervisor or a person in a supervisory position on (alleged date of injury).

Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. We have said that the date of injury is when the injured employee, as a reasonable person, could have been expected to understand the seriousness and work-related nature of the disease. Texas Workers' Compensation Commission Appeal No. 94534, decided June 13, 1994, citing Commercial Insurance Company of Newark, N.J. v. Smith, 596 S.W.2d 661 (Tex. Civ. App.-Fort Worth 1980, writ ref'd n.r.e.). The date of the first symptoms will not necessarily constitute the date of injury. Texas Workers' Compensation Commission Appeal No. 011325, decided July 30, 2001.

There was certainly conflicting evidence on when the claimant should have known that the disease, in this case wrist and elbow pain, may be related to the employment. In recorded statement dated September 20, 2001, given by the claimant the following questions and answers were recorded:

> Q. At what point did you know that the pain that you were having was related to your job?
>
> A. Well, uh the way they, they do things you know that we used to, it used to be a lot more easier before and now it's getting more harder, like they're asking us to run more machines at the time and stuff like that so we have to work twice as hard now.
>
> Q. Did you know a year ago that the pain you were having was related to your job though?
>
> A. Well, yeah, I mean cause every time I would try to you know do my job it would be bothering me but you know not really that bad.

In addition an employer's nurse's note dated (alleged date of injury), records that the claimant's complaints of "pain started approx 1 year ago." The hearing officer, in his Statement of the Evidence comments how he arrived at the _____, date of injury. That determination is supported by the evidence.

The claimant contends that she had good cause for not timely reporting her injury but does not specify what that good cause might be. If the claimant is contending trivialization as good cause the hearing officer specifically comments that a reasonable person would know pain that developed after working on a regular basis for a year was more than just "pain." Further more, any good cause for trivialization would have ended on June 26, 2001, when the claimant sought care at the nurses station for her injury.

By affirming the _____, date of injury, the claimant did not give timely notice of that injury on (alleged date of injury), and therefore, the injury was not compensable. The claimant cannot by definition in Section 401.011(16) have disability without a compensable injury.

The Appeals Panel does not rule on questions of adequacy of counsel, and in any case our review of the record indicates that the case turned on the date of injury question which the hearing officer determined was based on the claimant's own testimony and recorded statement.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We hold that the hearing officer's determinations are not so against the great weight and preponderance of the evidence

as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge